

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-372-T

IN RE:)
)
Application of Rasier, LLC for a)
Class C – Transportation Network Company)
Certificate of Public Convenience and)
Necessity for Operation of Motor Vehicle)
Carrier)
_____)

MOTION TO STRIKE

Pursuant to 26 S.C. Code Ann. Regs. 103-829 and applicable South Carolina law, Rasier, LLC (“Rasier”) hereby objects to and moves to strike portions of the prefiled direct testimony of John Bacot on behalf of Intervenor Checker Yellow Cab Company, Inc. South Carolina’s (“Intervenor”). In support thereof, Rasier would show as follows:

1. On December 29, 2014, Intervenor submitted the prefiled direct testimony of John Bacot. Therein, Intervenor purports to offer Mr. Bacot as an “expert on matters pertaining to Class C operations and the management, ownership, and operation of a taxicab business in SC.” Nevertheless, Mr. Bacot provides little, if any, testimony as to matters related to his purported expertise or any other information that would assist the Commission in making a determination in this matter.

2. Instead, Mr. Bacot attempts to testify to and provide opinions on matters outside his purported expertise and/or wholly irrelevant to the matter before the Commission. *See State v. Commander*, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011) (“[A]n expert's testimony may not exceed the scope of his expertise.”); 26 S.C. Code Ann. Regs. 103-846(A) (“Irrelevant,

immaterial or unduly repetitious evidence shall be excluded”); Rule 402, SCRE (“Evidence which is not relevant is not admissible”); Rule 702, SCRE (stating that witness must be qualified as an expert based on his “knowledge, skill, experience, training, or education”). For example, Mr. Bacot attempts to testify to and proposes to provide opinions about the business structure and relationship of Uber and Rasier, notwithstanding his admission that his understanding in this regard is limited. As another example, Mr. Bacot attempts to testify regarding Uber’s operations and contractual arrangements, and attempts to provide opinions regarding the same. His testimony on these topics is neither related to his purported expertise, nor relevant to the matter before the Commission. Moreover, nothing about Mr. Bacot’s claimed expertise establishes that he has the requisite knowledge, experience, or education to provide expert testimony or opinion regarding any of these subjects.

3. Further, Mr. Bacot’s testimony is replete with inadmissible (and in most cases completely erroneous) legal opinion and conclusions regarding, *inter alia*, interpretation and application of the Commission’s regulations, legal contracts, and corporate law, which is not helpful, is not relevant, is not testimony that Mr. Bacot is qualified to provide, and is not testimony that would be relied on by a reasonably prudent person. 26 S.C. Code Ann. Regs. 103-846(A); Rules 403, 701, 702, 703, SCRE; *see Commander*, 396 S.C. at 264, 721 S.E.2d at 418 (“[E]xpert testimony on issues of law is usually inadmissible”); *O’Quinn v. Beach Assocs.*, 272 S.C. 95, 106-07, 249 S.E.2d 734, 739-40 (1978) (“The testimony of [the expert] was offered to establish a conclusion of law within the exclusive provenance of the court and thus was properly excluded”). As an example, without any substantiation, Mr. Bacot characterizes Rasier as a “sham corporation,” and purports to offers opinions regarding the nature and legal status of Rasier’s “incorporat[ion].” Even if such testimony were appropriate, which Rasier denies,

Intervenor fails to establish that Mr. Bacot has any knowledge, training, or qualifications that would permit him to opine on matters of corporate law. Moreover, Mr. Bacot's flawed and wholly inaccurate description of corporate matters and of Uber and Rasier's business structure demonstrates that he is completely unqualified to provide opinions on such matters.

4. Mr. Bacot's opinions also lack an even marginal, much less adequate, foundation and therefore are nothing more than mere conjecture. *See Young v. Tide Craft, Inc.*, 270 S.C. 453, 468, 242 S.E.2d 671, 678 (1978) ("The opinion of the expert 'must be based upon facts...sufficient to form a basis for an opinion....Expert opinion is inadmissible if its factual foundation is nebulous.'"). Likewise, to the extent that Mr. Bacot's testimony is intended as fact testimony, Intervenor has failed to lay a proper foundation of personal knowledge. Rule 602, SCRE. For example, as stated above, Mr. Bacot testifies to his claimed understanding of the operations of Rasier and Uber, but admits that he "had never heard of [Rasier] until the application was filed." When asked whether he is familiar with Uber's operations, he then states that he is only familiar "enough to know that they are in the taxi business but have refused to apply for permits that everyone else in the taxi business is required to have." These limited (and undeniably biased) declarations of Mr. Bacot's professed familiarity with Rasier and Uber provide no foundation for his purported "expert" opinions, nor do they demonstrate that Mr. Bacot has any personal knowledge of Uber's or Rasier's operations. At bottom, Mr. Bacot's testimony is simply devoid of the requisite information that would allow the Commission to conduct a meaningful analysis of its reliability and therefore should be stricken.

5. Finally, Mr. Bacot's testimony is replete with hyberbole, rhetorical questions, hearsay, rank speculation, and even unsupported accusations against Uber and Rasier, none of

which are appropriate for either expert or lay testimony or at all helpful to the Commission's consideration of this matter.

6. Accordingly, for the reasons stated herein, Rasier objects to and moves to strike the following portions of Mr. Bacot's testimony:

- a. Page 3, Lines 9-18;
- b. Page 4, Lines 1-2, 14-17;
- c. Page 5, Lines 1-13;
- d. Page 6, Lines 7-18;
- e. Page 7, Lines 3-6 (starting with "It is"), 9-21 (starting with "Every aspect");
- f. Page 8, Lines 1-4, 14-17 (starting with "and are");
- g. Page 9, Lines 9-11 (ending with "insurance"), 16-18;
- h. Page 10, Lines 3-4 (ending with "drivers."), 7-10 (starting with "But they");
- i. Page 11, Lines 7-10, 13-14;
- j. Page 12, Lines 2-4, 13-19;
- k. Page 13, Lines 1-9, 16-17 (starting with "but Rasier");
- l. Page 14, Lines 10-11 (starting with "This goes"), 14-19 (starting with "There is");
- m. Page 15, Lines 1-21;
- n. Page 16, Lines 1-20;
- o. Page 18, Lines 13 ("UberX is a taxi service."), 15-16 ("for what it is; a taxi");
- p. Page 19, Lines 2-5 (starting with "It" and ending with "complaints."), 7-10 (starting with "This entire"), 18-19 (starting with "In my");
- q. Page 20, Lines 1-20.

WHEREFORE, having fully set forth its motion, Rasier requests that the Commission issue an order striking the identified portions of the testimony and granting Rasier such other and further relief as is just and proper.

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